REMARKS

Claims 1-3, 6-13, 15-22, and 24-29 are pending and stand rejected. Claims 1, 11, and 20 are amended. No claim is added or canceled. Claims 1-3, 6-13, 15-22, and 24-29 are pending upon entry of this amendment. Applicants thank the Examiner for carefully considering the present application.

Response to Claim Rejections Under 35 USC 103(a) in View of Peng, Choate, and Majmundar

In paragraph 6 of the Office Action, the Examiner rejected claims 1-3, 6-13, 15-22, and 24-29 under 35 USC § 103(a) as allegedly being anticipated by U.S. Patent Application Publication No. 2004/0098361 to Peng ("Peng") in view of U.S. Patent Application Publication No. 2001/0054026 A1 to Choate ("Choate") and U.S. Patent No. 6,970,698 to Majmundar et al. ("Majmundar"). This rejection is now traversed in view of the above amendment.

Independent claim 1 has been amended to now recite the following:

> A method for installing a software component on a recipient computing device on a network connected to a donor computing device comprising the software component, the method comprising:
>
> monitoring resource usage by software applications running on the recipient computing device, wherein the monitored resource usage comprises usage of the network by the software applications;
>
> determining a need of the recipient computing device for a software component;
>
> initiating a transfer of the software component from the donor computing device to the recipient computing device via the network **during a time period when the monitored resource usage indicates that sufficient network bandwidth is available** to not adversely impact usage of the network by the software applications; and

initiating an installation of the software component on the recipient computing device during a time period selected based on the determined need and the monitored resource usage that does not adversely impact the software applications.
(emphasis added)

As amended, independent claim 1 beneficially recites a method for installing a software component on a recipient computing device without adversely impacting other software applications on the recipient computing device. The method monitors resource usage by software applications running on the recipient computing device, including their network usage. The method determines a need of the recipient computing device for a software component, and initiates a transfer of the software component to the recipient computing device during a time period when the monitored resource usage indicates that sufficient network bandwidth is available to not adversely impact network usage by the software applications.

The cited references, Peng, Choate, and Majmundar, either alone or in combination, fail to disclose initiating a transfer of a software component when monitored resource usage indicates enough bandwidth is available to not impact software applications. Peng discloses an upgrade system for providing automatic embedded software component upgrades on host devices. See Peng, Abstract. When an upgrade becomes available, the server transfers appropriate upgrade files to the client device. See Peng, paragraphs [0035-36]. The Examiner acknowledged that Peng does not explicitly disclose monitoring network usage or initiating a transfer when sufficient network bandwidth is available to not impact applications.

Choate does not remedy the deficiencies of Peng. Choate is directed toward monitoring application usage remotely over a network for billing purposes. See Choate,

Abstract. The Examiner also acknowledged that Choate, like Peng, does not explicitly disclose the transfer initiation step.

The Examiner relied on Majmundar for disclosing the transfer initiation step as previously claimed, and cited col. 4, lines 29-41 and col. 6, lines 44-62 for support. Majmundar is directed toward an automated method of downloading data to terminal devices. See Majmundar, Abstract. Col. 4, lines 29-41 of Majmundar teaches pushing download data to multiple terminal devices simultaneously to reduce bandwidth usage. Lines 40-41 states that the "downloads may be scheduled to avoid times of peak network utilization," but do not disclose or suggest monitoring the network to identify the times of peak network utilization. Even if one assumes that some monitoring is conducted in order to identify the times of peak network utilization, there is no teaching or suggestion to monitor network usage by applications running on a computing device, and initiate a download when the monitoring indicates sufficient network bandwidth is available to not adversely impact the applications. A download scheduled to avoid times of peak network utilization might still adversely impact usage of a network by a running application.

Col. 6, lines 44-62 of Majmundar discloses that a host can send calendar updates to PCs to schedule a download at a time when the PCs are expected to be powered off. The PCs can wake up at the scheduled time to download the updates. This disclosure likewise fails to suggest monitoring network usage and initiating a transfer when the monitored usage indicates there will be no adverse impact. The download is scheduled at a time when the PCs are *expected* to be powered off. However, there is no monitoring to determine whether the PCs are actually off. Thus, the recipient computer may actually be on with its network capacity fully utilized by local software applications by the time the download is scheduled.

In view of the above, Peng, Choate, and Majmundar, whether considered individually or in combination, fail to disclose initiating a transfer as claimed. Thus, independent claim 1 as amended is patentable over Peng, Choate, and Majmundar. Independent claims 11 and 20, and the dependent claims, are allowable for at least the same reasons.

In addition, dependent claim 6 recites "monitoring the transfer of the software component; and reducing a transfer rate for the transfer of the software component based on an increase in the usage of the network by the software applications." The Examiner cited paragraphs [0031-34] of Peng for supporting the rejection of claim 6. These paragraphs merely teach an infrastructure that includes a software component certification server, an upgrade manager, and an upgrade server, and are unrelated to reducing transfer rate of a software component based on increased network usage by local software applications. Choate and Majmundar also fail to teach or suggest these additional limitations. Thus, dependent claim 6 is patentably distinguishable over the cited references for at least the reasons discussed above. Dependent claims 7, 10, and 27 depend on claim 6, and recite additional limitations not taught or suggested by any of the cited references. Therefore, dependent claims 7, 10, and 27 are allowable for at least the same reasons.

Accordingly, withdrawal of the § 103 rejection is respectfully requested.

In conclusion, Applicants submit that the claims as amended are patentable over the cited reference and request that the application be allowed. The Examiner is invited to contact the undersigned by telephone in order to advance the prosecution of this case.

Respectfully Submitted,
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